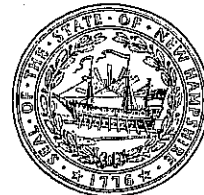




The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 12, 2010

The Honorable Anne-Marie Irwin, Chairman  
House Executive Departments and Administration Committee  
Legislative Office Building, Room 306  
Concord, New Hampshire 03301

Re: HB 1149, relative to incorporation by reference in state agency rulemaking

Dear Chairman Irwin and members of the Committee:

Thank you for the opportunity to testify on HB 1149, relative to incorporation by reference in state agency rulemaking. The Department of Environmental Services supports this bill, which would allow an agency to incorporate into its rules a manual of best management practices prepared by the agency alone or in conjunction with another state agency or private entity.

Many agencies, including the Department of Environmental Services, work collaboratively with other state and federal agencies and private entities to develop best management practice ("BMP") manuals for a variety of activities, many of which are also subject to rules adopted pursuant to RSA 541-A. Because such manuals are not subject to the same drafting requirements as rules, they can be written in a style that is more understandable by the average user. However, the current statute prohibits an agency from incorporating any document prepared by or on behalf of itself. This bill would allow agencies to participate in the preparation of BMP manuals without losing the ability to then incorporate such manuals into rules.

The Department would like to suggest one clarification to the bill, to have it explicitly apply to rules for which the notice of rulemaking proceedings required by RSA 541-A:6 is filed on or after the bill's effective date. This could be done by inserting a new section 2, as follows:

2 Applicability. This act shall apply to any proposed rule for which the notice required by RSA 541-A:6 is filed on or after the effective date of the act.

Thank you again for the opportunity to comment on this bill. If you have any questions, please call me or Gretchen Hamel of my staff at 271-3137.

Sincerely,

Thomas S. Burack  
Commissioner

cc: Representative Patten  
Representative Pilotte